



Term and condition

To be eligible for NEP implementation funding, provided directly or through a subaward, an agricultural land owner whose property borders fresh or estuarine waters must establish and maintain a riparian buffer on all water courses on the property consistent with the National Marine Fisheries Service (NMFS) guidelines for Riparian Buffers Along Agricultural Water Courses in NW Washington and EPA's implementation guidance on the NMFS guidelines. A land owner may be excluded from meeting this requirement if the funding is used solely for removal of shoreline armoring, onsite sewage system repair or replacement, engineered dike setbacks, or culvert or tide-gate replacements that provide for fish passage at all life stages. In some cases, the NMFS recommendations are framed in terms of ranges of buffer widths rather than point estimates, and expressed as probabilities of achieving desired outcomes. Local conditions and local circumstances matter, and may affect the choice of the riparian buffer most effective at achieving salmon recovery. Buffer widths may be less than specified in the table in cases where there is a scientific basis for doing so and all affected tribes in the watershed agree to deviations from the NMFS guidelines or where there are physical constraints on an individual parcel (e.g. transportation corridors, structures, naturally occurring conditions).

FAQs on the NMFS buffer table term and condition for Puget Sound Lead Organizations **Final 12-3-13**

EPA and Puget Sound Lead Organizations, working with Puget Sound tribes, have agreed to include the attached term and condition in 2013 NEP funded subawards. It is expected that Lead Organizations will be working with subaward applicants on a case by case basis to determine eligibility, exclusions and deviations from the NMFS guidelines in the spirit of this agreement. The following FAQs provide further guidance that Puget Sound LOs may consult while working with applicants.

Is State match subject to the term and condition?

No, but State agencies are encouraged to utilize the NMFS recommendations to maintain consistency and ensure resource protection on agricultural lands.

The term and condition states that *to be eligible for NEP implementation funding, provided directly or through a subaward, an agricultural land owner whose property borders fresh or estuarine waters must establish and maintain a riparian buffer on all water courses on the property consistent with the National Marine Fisheries Service (NMFS) guidelines for Riparian Buffers Along Agricultural Water Courses in NW Washington and NRCS guidance on the NMFS guidelines.* What is the definition of agricultural?

Agricultural land, for the purposes of this term and condition, includes lands that meet the definition of agricultural lands and activities in the Washington Shoreline Management Act. (RCW 90.58.065). If a parcel is zoned agricultural it will generally be considered agricultural for the purpose of implementing this term and condition. Properties zoned as rural residential and are hobby farms or nonrevenue producing farms will also be considered as agricultural land for the purpose of implementing this term and condition.



When does the recommended site assessment apply?

The buffer widths provided in the guidance on the table are default minimums designed to provide a minimum level of designated use protection and grant accountability. Grant recipients are strongly encouraged to conduct site assessments to design larger buffer widths. We also expect recipients to conduct site assessments to justify deviations described below.

Is there a process to identify alternative buffers that are different than the NMFS guidelines and EPA's implementation guidance on the NMFS guidelines?

Yes, In those instances where applicants are intending to establish riparian buffers that are larger than those called for by the NMFS guidelines and EPA's implementation guidance on the NMFS buffers, there is no need to document justification or seek approval. However, there are some situations where funding could be sought to implement buffers smaller than those proposed in the buffer table. These are:

1. **Infrastructure Limitations**—Where implementing the buffers called for by the buffer table is prevented by physical constraints, such as transportation corridors, structures, or naturally occurring conditions. In this situation, the buffer implemented could be narrower at the location occupied by the road or structure, but must meet the requirements of the buffer table on the rest of the property. Or,
2. **Significant Hardship**--The landowner's property is no greater than 10 acres and the landowner demonstrates that implementing the buffers called for by the buffer table would preclude reasonable use of his/her property. Reductions in buffer sizes must be supported by documentation, reviewed and approved by the LO, and agreed to by affected tribes. Or,
3. **Site Specific Science**— Site specific scientific information is available to support a different buffer that will meet water quality standards and protect salmon. For example, there may be some situations in which the site potential tree height for the site is under 100 feet. Based upon a site-specific soils or other scientific analysis conducted by a soils scientist, or other qualified scientist (e.g. wetland scientist, botanist) the applicant could propose a riparian buffer less than those called for in the buffer guidance.

Note: To be eligible for funding, hardship or science-based buffers must be no less than 35 feet wide alongside ditches or fish-bearing intertidal/estuary streams (category I and V watercourses) and no less than 50 feet wide for other fish bearing streams (categories II, III, and IV watercourses). Reductions in buffers must be supported by documentation, reviewed and approved by the LO, and agreed to by affected tribes.



The term and condition states that *buffer widths may be less than specified in the table in cases where there is a scientific basis for doing so and all affected tribes in the watershed agree to deviations from the NMFS guidelines or where there are physical constraints on an individual parcel (e.g. transportation corridors, structures, naturally occurring conditions)*. What constitutes a scientific basis?

Generally, a scientific basis means supported by (preferably local) fisheries biologists or peer reviewed research. A scientific basis for deviations from the NMFS table may be established in existing documents such as TMDL documents, local Salmon Recovery Plans, as well as supported by information collected during a site assessment.

Who determines if all affected tribes agree to deviations? In 2012, EPA established a new process for tribes to review project work plans that Lead Organizations have selected for funding. EPA will use this process to ensure that potentially affected tribes review projects that may contain restoration projects subject to the term and condition. When possible, EPA encourages project sponsors to work with tribes prior to submitting an application for funding to ensure that any deviations are acceptable. However, often initial project work plans will be for a targeted stretch of stream with specific parcels to be identified as project sponsors recruit landowner participants. In these instances, LOs should work with project sponsors as landowners and specific properties are identified to ensure tribal approval where there are proposed projects that deviate from the NMFS table. When requested, EPA will provide assistance to Lead Organizations to identify affected tribes.

What technical assistance is available to applicants or Lead Organizations to determine buffer width and composition?

It is expected that applicants will have worked with tribes, local soils scientists, fisheries biologists, conservation districts, nonprofit organizations, consultants and others to develop an application package. As Lead Organizations receive applications, upon request, EPA will work to connect Lead Organizations with tribes, NMFS, NRCS, Ecology, WDFW and other restoration experts to provide technical assistance.

How was the NMFS table developed?

Please see the attached letter from the National Marine Fisheries Service that describes the table and its origins.

What resources are available to help Lead Organizations and applicants interpret the NMFS buffer table?

EPA has developed simplified NMFS buffer table implementation guidance that includes minimum buffer width values based on stream type. In addition, the Washington State Department of Ecology has developed a GIS based stream mapping tool that includes fish presence based on WDFW and Northwest Indian Fisheries Commission databases.

<http://waecy.maps.arcgis.com/explorer/?open=d5478a4aaf704d81bac63ffc934e1549&extent=-13922905.3138354,5784350.44593158,-13140190.1441951,6268043.96092021>

As with all EPA grants, EPA Project Officers will work with Lead Organizations as LOs develop solicitations and review applications to provide technical assistance and/or to connect LOs with NMFS,



tribes, WDFW, Ecology, NRCS or other agencies/organizations if there are technical questions on buffers for a specific project.

How should Lead Organizations determine whether or not applications demonstrate compliance with the table term and condition?

It is expected that LOs will follow their existing agency guidelines for determining compliance with terms and conditions of grants. LOs can determine what should be included in application materials to demonstrate how the applicant would meet the term and condition. Application materials should include aerial photos, descriptions of planned riparian buffers (width and composition) and other materials used to form the basis for the planned buffers. LOs are also strongly encouraged to collect data on project implementation, including buffer width, length, and composition. In cases where project proposals include deviations from the NMFS buffer table based on science, applicants should submit documentation of agreements with tribes and fisheries biologists as well as supporting documentation of the scientific basis for the deviation with application packages.

EPA and Puget Sound Lead Organizations, working with Puget Sound tribes, have agreed to include a term and condition requiring use of the NMFS buffers in 2013 NEP funded subawards, however, other state and federal agency programs funding habitat restoration on Puget Sound waters may not require use of the NMFS buffers. What can LOs tell landowners/applicants/others on this to avoid confusion or “buffer shopping”?

The NMFS buffers represent federal fish agency recommendations to protect anadromous and ESA listed fish on agricultural lands. While other state and federal grant programs may not currently require use of the NMFS buffers, many federal and state agencies are working to align conditions to ensure consistency and resource protection. For example, NRCS Biology Technical Note 14 Wildlife Habitat Evaluation Guide is currently being updated, with the intent to provide buffer widths consistent with NMFS recommendations. Also, science on buffers is evolving through NEP funded efforts to develop consolidated riparian management recommendations over the next 1-2 years through the WDFW led review and development of Riparian Habitat Guidelines.